



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0111]

Hours of Service of Drivers: Application for Renewal of Exemptions from the 14-Hour Rule during Independence Day Celebrations for Illumination Fireworks, LLC and ACE Pyro, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of renewal.

SUMMARY: FMCSA announces its decision to grant exemption renewals to Illumination Fireworks, LLC and ACE Pyro, LLC (the applicants) from the prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after coming on duty. The applicants requested the exemption renewals for the period of June 28 – July 8, for the next 5 years (2016-2020 inclusive). The applicants were previously granted exemptions during the Independence Day periods of 2014 and 2015. The 5-year renewals will cover the drivers of approximately 50 CMVs employed by the applicants to stage fireworks shows celebrating Independence Day. The Agency has determined that the terms and conditions of the limited exemptions will ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemptions.

DATES: These exemptions are effective during the periods of June 28 through July 8, 2016 through 2020.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5

p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2014-0111” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the

information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Application for Exemptions

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. The applicants represent two fireworks display companies that were previously granted exemptions during the Independence Day periods of June 28 – July 8, 2014 and 2015. The applicants' initial exemption application for relief from the 14-hour rule, submitted in 2014 and in docket FMCSA-2014-0111, fully describes the CMV operations of fireworks companies during the extended July 4 holiday.

The applicants requested a renewal of their exemptions for the period of June 28 – July 8, for the next 5 years (2016-2020 inclusive). Section 5206(a)(2) of the

"Fixing America's Surface Transportation Act" (FAST Act) [Pub. L. 114-94, 129 Stat. 1312, Dec. 4, 2015] amended 49 U.S.C. 31315(b) to permit exemptions for no longer than 5 years from their dates of inception.

As stated in the applicants' request, their CMV drivers hold commercial driver's licenses (CDLs) with hazardous materials endorsements and transport Division 1.3G and 1.4G fireworks to set up fireworks shows for Independence Day. The applicants state that compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves because two drivers would be required, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty-period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show, should they have unused fireworks after the display. They would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

IV. Method to Ensure an Equivalent or Greater Level of Safety

As a condition for maintaining the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving the operation of any CMVs under this exemption. The applicants advise they have never been involved in a crash.

In the exemption request, the applicants assert that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display and normally do so in the

early morning when traffic is light. The applicants noted that during the 2015 Independence Day season, the farthest Illumination Fireworks traveled from its home base was 150 miles. At the site, drivers spend considerable time installing, wiring, and checking the safety of fireworks, followed by several hours of duty in the late afternoon and early evening prior to the event. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

V. Public Comments

On March 16, 2016, FMCSA published notice of this application, and asked for public comment (81 FR 14208). One comment was received; Advocates for Highway and Auto Safety (Advocates) opposed the exemption.

Advocates said it “objects to the granting of the present exemption on the same policy and safety grounds detailed in prior comments regarding similar applications for exemption filed by the American Pyrotechnics Association and the original application filed by the applicants.” Advocates pointed out that Illumination Fireworks’ out-of-service (OOS) rate for vehicles was 61 percent above the national average; for drivers more than 5 times the national average; and for hazardous materials nearly 6.5 times the national average. It also noted that Illumination Fireworks was cited for three violations on June 28, 2014, the first day of the previous exemption; two of the violations resulted in OOS orders. Similarly, Advocates described ACE Pyro’s vehicle OOS rate as double the national average and its driver OOS rate as more than 3.5 times the national average. Advocates stated that, “Motor carriers of hazardous materials with less than exemplary safety records, such as these petitioners, should not be granted an exemption from the

federal safety and hours of service requirements that have been specifically adopted to ensure operating safety on our public roads and highways.”

All comments are available for review in the docket for this notice.

VI. FMCSA Response to Public Comments and Agency Decision

The Agency comprehensively investigates the safety history of each applicant during the review process. Prior to publishing a **Federal Register** notice announcing the receipt of an exemption request, FMCSA ensures that the motor carriers involved have a current USDOT registration, Hazardous Materials Safety Permit (if required), minimum required levels of insurance, and are not subject to any “imminent hazard” or other OOS orders. The rating of the carrier in the Agency’s Safety Management System (SMS) is considered. FMCSA has reviewed these safety records, including inspection and accident reports, for the applicants. The Agency also requested and received a records review of each carrier from the Pipeline and Hazardous Materials Safety Administration (PHMSA). None of these records reflected decisive negative information about the applicants’ safety performance or status. Each applicant has a “satisfactory” safety rating.

The OOS records of Illumination Fireworks and ACE Pyro, as described by the Advocates, are not representative of the safety record of these carriers. Because of the small numbers of inspections on record for the applicants, the OOS rates are not a valid basis for comparison with industry-wide averages. For example, a carrier having only three inspections, with one of those including a driver OOS violation, would have a driver OOS rate of 33% compared to the National average for inspected drivers of

approximately 5%. Under those circumstances, FMCSA would not consider the apparently high OOS rate to be particularly significant.

The June 28, 2014 inspection of Illumination cited by Advocates occurred nearly 2 years ago. The OOS violations included a problem with the hazardous materials (HM) shipping papers and a driver with an improper class of CDL. Although serious, neither of these violations posed an imminent hazard since one was a paperwork violation and the driver cited for the other held a CDL with a hazardous materials endorsement. FMCSA considers 2 years of data when evaluating safety records. This inspection will no longer be within the 2-year period by the time this year's exemption period begins.

The two inspections of Ace Pyro on record occurred on different vehicles in 2015. In both instances, there were OOS problems with brakes and on one a driver with an improper class of CDL. Because Ace Pyro had no negative information in our review of its safety records that would warrant an unsatisfactory safety rating, FMCSA does not consider these two inspections to be a clear indicator of overall safety problems with this carrier.

The Agency believes that the applicants operating under the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. FMCSA therefore grants the requested exemptions for 5 years.

VII. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) is effective for the periods of June 28-July 8, 2016 through 2020.

Extent of the Exemption

The exemption is restricted to the drivers employed by the applicants. The drivers are exempt from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by the exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemption is contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time. The exemption is further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. Drivers operating under the exemption must carry a copy of this **Federal Register** notice or equivalent signed letter from FMCSA, and provide it to enforcement officers upon request. The carriers and drivers must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Other Conditions

The exemption is contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) orders issued by FMCSA. Each driver covered by the exemption is required to maintain a valid CDL with the appropriate endorsements, not be subject to any suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Accident Notification

Exempt motor carriers are required to notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

- a. Exemption Identity: “Illumination Fireworks” or “Ace Pyro”
- b. Name of operating motor carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and driver’s license number and State of issuance,
- f. Vehicle number and State license plate number,

- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- k. The driver's total driving time and total on-duty time period prior to the accident.

Accidents would be reported via email to MCPSPD@DOT.GOV.

Issued on: June 27, 2016.

T.F. Scott Darling, III,
Acting Administrator .

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